



Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 40--Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for Industrial Mineral Open
Pit and In-Stream Sand and Gravel Operations

ORDER OF RULEMAKING

By the authority vested in the Land Reclamation Commission under 444.530 and 444.767, RSMo (2001), the Commission amends a rule as follows:

10 CSR 40-10.020 Permit Application Requirements is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 2, 2004 (29 MoReg 204). No changes have been made to the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SPECIAL NOTE: Private individuals who mine for their personal use are exempt from these rules. Political subdivisions who mine sand and gravel for public projects and utilize their own personnel and equipment are also exempt from these rules. This exemption is provided in the law at 444.770.5 RSMo. Nothing in this amendment changes these exemptions.

SUMMARY OF COMMENTS: The Missouri Land Reclamation Commission, through its staff in the Land Reclamation Program of the Missouri Department of Natural Resources, received comments on this proposed amendment from several parties representing various viewpoints both in written form during the comment period and during the public hearing. The comments ranged from persons stating there should be no mining allowed at all within any of Missouri's streams to persons stating there should be no regulation at all on the mining of sand and gravel from Missouri's rivers and streams. Comments were received from private individuals, stream user organizations, mining industry organizations, environmental organizations, private property rights organizations, county commissions and state legislators. Many of the written comments received stated an overall satisfaction with the proposed regulations and the statement that the regulations should not be further compromised. Some commentors expressed a desire for stronger regulations while others expressed a desire to keep the proposed regulations as guidelines only. The formal public comment period ended on March 25, 2004 although the Land Reclamation Commission continued to invite informal input into the proposed amendment until April 30, 2004. A public hearing was held on this proposed amendment on March 25, 2004. Because the nature of the comments received both in writing and at the hearing are, in many instances, similar

if not exactly alike, they are being grouped together according to their content for purposes of this summary of responses to comments. Where more than one person or organization submitted the same comment, this is noted below.

COMMENT: One commentor expressed the opinion that no mining of sand and gravel should be allowed at all in any of Missouri's stream courses.

RESPONSE: The current statutes which are known as the "Land Reclamation Act", allow for the excavation of sand and gravel from Missouri's streams and provide that, when not exempt, an operator must first secure a mining permit to engage in surface mining from the Land Reclamation Commission. The "Act" contains exemptions from the permitting requirement for political subdivisions and private individuals in certain situations. The permit application must state how the operator will extract sand and gravel from the stream in accordance with recognized guidelines which are designed to protect both water quality and the physical nature of the stream while allowing for the extraction of the mineral deposit.

COMMENT: One commentor, representing the industry involved in the rulemaking, stated that the proposed amendment is a good compromise that allows for mineral extraction while at the same time is protective of the stream. The statement was made that the industry finds the amendment to be acceptable.

RESPONSE: The Land Reclamation Commission agrees that the amendment is an acceptable compromise arrived at through extensive discussion and examination by all interested parties involved.

COMMENT: One commentor asked the question if the Land Reclamation Program had coordinated with the Water Protection Program concerning crossing a stream in order to access a mineral deposit.

RESPONSE: The department's Land Reclamation Program has coordinated with the Water Protection Program during the course of the development of the amendment and has worked closely with the Water Protection Program in order to assure the amendment does not conflict with that program's requirements. The Water Protection Program's requirements are separate from and in addition to the requirements set forth in the Land Reclamation Act and the Land Reclamation Commission's regulations.

COMMENT: One commentor asked the question that if an operator has a permit to mine sand and gravel from a floodplain, does the amendment allow for the crossing of the stream associated with the floodplain in order to access the minesite.

RESPONSE: The amendment will allow for the stream to be crossed as long as the crossing is made as perpendicular to the stream flow as possible and there is no fill placed in the stream in order to construct such a crossing. However, the amendment does not address whether and when a permit is required from the U.S. Army Corps of Engineers or the Water Protection Program of the Missouri Department of Natural Resources.

COMMENT: One commentor questioned what review standard would be used to determine if specific (permit) conditions are necessary to preserve stream reaches within “Outstanding State Resource Waters”.

RESPONSE: The Land Reclamation Program will review all applications to mine within “Outstanding State Resource Waters” with a higher level review than is performed for permits outside of these stream reaches. The purpose will be to provide additional protective measures, if necessary, for these exemplary streams. This may include but not be limited to larger buffer zone requirements, further restrictions on depth of excavations than provided by the amendment, and limiting or negating any equipment operation in the flowing water of such streams for purposes of crossing such streams or any other purposes. The Water Protection Program may have separate rules or statutes that may restrict activities on Outstanding State Resource Waters that must be followed.

COMMENT: Several commentors expressed their support for the amendment but also stated their desire to strengthen the amendment by requiring a twenty (20) foot buffer between the area of excavation and the flowing water instead of the ten (10) feet proposed; requiring a one hundred (100) foot buffer along the high bank of the stream to protect the riparian corridor instead of the twenty-five (25) feet proposed; requiring that no excavation be allowed below one (1) foot above the flowing water level instead of to the water level as proposed; and requiring a determination of the presence of endangered species instead of the consultation provision with the United States Fish and Wildlife Service and the Missouri Department of Conservation as proposed.

RESPONSE: The development of the amendment resulted from several years of discussions, meetings, hearings, and stakeholder input. The resulting amendment is seen by the program and the commission as the best that could be realized given the importance of the industry, the importance of the mineral commodity, and the importance of protecting the stream resource. While the comments above are noted and appreciated by the program and commission, the resulting amendment is generally recognized by all parties concerned to be a reasonable approach that balances the mining of this important resource with protection of Missouri’s streams from undue damage and pollution.

COMMENT: Many comments were received that expressed satisfaction with the amendment as proposed and stated that the amendment is the minimum compromise acceptable to them and that no further compromise be considered. These same commentors expressed the desire for the commission and program to proceed with implementation of the amendment as soon as possible.

RESPONSE: The Land Reclamation Program and the Land Reclamation Commission appreciate these comments and are in agreement with them.

COMMENT: Many comments were received that expressed support for the amendment and went on to state their desire to include city, county, and state entities within the amendment.

RESPONSE: Support for the amendment is appreciated. However, political subdivisions who use their own personnel and equipment to excavate sand and gravel from streams for

use on their own projects are exempt from the permitting requirement by statute. Private individuals who mine for personal use are also exempt from the permitting requirement by statute. The current amendment cannot and does not do anything to alter these statutory exemptions.

COMMENT: Several commentors expressed concerns about the increased costs to commercial sand and gravel operators and the impacts to the resulting costs for production of concrete and road maintenance for county governments who do not own their own equipment and rely upon commercial operators for this product.

RESPONSE: This concern was expressed at least two years ago and was in fact the reason that the Land Reclamation Commission ordered a workgroup to rewrite the proposed rules into their current form. The Commission did not want to impose standards that would increase costs dramatically as the concerns expressed. The present form of the proposed rules was presented at the May 2003 meeting of the Land Reclamation Commission, and all parties including the industry representatives stated that they could live with these proposed rules. As a background summary, the amendment was derived from previous permitting and operational requirements of the Army Corps of Engineers general permit #GP-34M. These general permits were issued by the Corps to virtually all commercial mining operators during the mid to late 1990's. During that time period commercial operators were required to operate in compliance with those permit conditions. Operators were, at that time a part of the process that resulted in the GP-34M permit and openly expressed that those permit conditions did not result in an increased cost for production of the mineral commodity. The current amendment is, in fact, a reduced version of those same requirements which should also result in no significant increased costs to produce the important commodity of sand and gravel which is relied upon to produce concrete along with other valuable uses for this resource. Furthermore, the current regulations require that a commercial operator, in an application for a mining permit, state in the application how the mineral commodity will be removed from streams without impact to water quality or the stream itself. Currently, applications for permits to conduct surface mining of sand and gravel incorporate descriptions of the measures an operator will take to protect the stream and water quality, such as restricting excavation to the level of the flowing water at the time of excavation or, in the case of a dry stream, restricting excavation to the lowest point in the defined channel or to where water would flow in the case of a rainfall event. Applicants currently state that the banks of the stream will not be disturbed and the operations will not be conducted in the water of the stream. These permit applications statements are now simply being converted into a rule. Operators that are currently in compliance with their existing permits will not realize any impact on their method of operations and hence will not realize any increase costs of production. In fact, the program will be generating a new form of permit application for operators that will do away with the current necessity of filling out a "Stream Protection Plan" and replacing that part of the permit application with a standardized form that is filled in for the applicant. This form will then simply need to be signed and notarized by the applicant and the requirements for a permit application will then be met. This is seen as a cost reduction to the applicant which will save time and money for the applicant and result

in a complete permit application simply by signing the standardized form. It will also assure that all operators know up front how they will be expected to operate and all operators will be then mining this resource with consistent requirements across the state of Missouri. However, should an operator prefer to write a site specific stream protection plan, this is still an option and will be evaluated by the program for its effect in protection of the stream resource if a request for variance is received.

COMMENT: Several commentors objected to the amendment without scientific studies produced from the state of Missouri to show a need for the amendment.

RESPONSE: During the course of the development of this amendment, the Program has collected research studies from a variety of sources that address the impacts of sand and gravel mining from streams. While it is true that specific studies on streams within Missouri are minimal, there has been extensive research done on streams throughout the United States and elsewhere in the world. These studies have been provided to all interested parties and are available on the program's web site. The studies clearly indicated that improper mining of sand and gravel from streams can and does result in overall stream degradation and impacts to water quality and aquatic life within those streams. It can be reasonably extrapolated that these same impacts from improper mining elsewhere will also result in impacts to the streams of Missouri.

COMMENT: Several commentors stated that the amendment will prohibit the excavation of sand and gravel and result in excess gravel build up thereby causing an increase in erosion to the adjacent stream banks.

RESPONSE: The amendment does not in any way prohibit the excavation of sand and gravel. The amendment sets forth base requirements for this type of excavation however, provisions are made in the amendment for any applicant to apply for a variance from the base requirements if site specific conditions warrant the variance. The whole point of the variance provision in the amendment is to recognize the fact that streams can vary in their character and that there may very well be instances where site specific conditions would justify approval of a variance. The variance provisions of the amendment are viewed as an essential component of the amendment to allow for reasonable solutions to site specific conditions such as excessive gravel build up.

COMMENT: Several commentors asked the question of why regulations are needed.

RESPONSE: The amendment is designed for protection of streams and water quality in those streams while at the same time allowing for the mining of sand and gravel. The amendment also provides for all operators to clearly understand how they will conduct their mining operations and to provide for consistency in the permitting process for this industry.

COMMENT: Several commentors stated that "Class C" streams and the mineral contained within them are the sole property of the owner of that stream and that any regulation of the mining and commercial use of the mineral in those streams is unconstitutional.

RESPONSE: The amendment is based upon current statutes known as the Land Reclamation Act, §§444.760 to 444.790 of the Revised Statutes of Missouri. The Act does not provide for any exception based upon whether the stream is designated as a “Class C” stream in some other law. This amendment does not and cannot do anything to change the Land Reclamation Act. The Land Reclamation Commission and Land Reclamation Program believe, based upon advice of counsel, that the Act is constitutional.

COMMENT: Several commentors expressed the opinion that private property owners will be next in line to be regulated for the extraction of sand and gravel from streams and oppose the amendment on that basis.

RESPONSE: This amendment, as stated earlier, does not and cannot change any exemptions currently in existence under the law. The amendment clearly states up front that it applies to non-exempt mining operations only.

COMMENT: One commentor stated that a private landowner cannot hire a contractor to remove gravel from his/her property for personal use without first obtaining a permit and becoming subject to the regulations.

RESPONSE: This is a question of interpretation of the Land Reclamation Act. As stated above, this amendment is not changing the scope of applicability of the Land Reclamation Act.

COMMENT: Several commentors expressed the opinion that the amendment impinges upon a landowner’s right to sell gravel mined from his/her property thereby infringing upon private property rights.

RESPONSE: The requirement to obtain a permit for surface mining of a mineral resource is not addressed by this amendment. That requirement is found in statutes known as the “Land Reclamation Act” and applies to all minerals identified in that “Act”. Sand and gravel are two of those minerals. This amendment cannot and does not add any permit requirement that is not already contained within the Act.

COMMENT: One commentor stated that the Regulatory Impact Report, prepared by the program as a part of the proposed rule process, contains many false and misleading statements.

RESPONSE: The Regulatory Impact Report was prepared by the Program using the best information available to it at the time of preparation and in the spirit of openness, honesty, and credibility, and the Program believed that it was accurate at the time it was prepared. Everyone involved with the process of crafting this amendment did so with their own points of view and expectations. The Program believes that what the commenter is referring to as false and misleading is actually just an expression of a different opinion than the opinion held by the commenter.

COMMENT: Several commentors believe this amendment will prohibit the removal of sand and gravel from Missouri’s streams.

RESPONSE: This amendment does not contain a prohibition on the removal of this important resource from streams. The amendment is designed, in fact, to allow for the removal of this mineral commodity while at the same time providing for protection of an equally valuable resource to the citizens and economy of Missouri, that of our rivers and streams.

COMMENT: Several commentors stated that the Department of Natural Resources has failed to comply with the “Texas County – State of Missouri Land Management Plan” in the course of the development of this amendment.

RESPONSE: As stated at the beginning of this Order of Rule Making in the Special Note, political subdivisions using their own personnel and equipment are exempt by law from the permitting requirements of the Act. Political subdivisions who contract for services are affected only indirectly because their contract operator has always been subject to the permitting requirements of the Land Reclamation Act. As stated in a previous response, this concern was expressed at least two years ago and was in fact the reason that the Land Reclamation Commission ordered a workgroup to rewrite the proposed rules into their current form. The Commission did not want to impose standards that would increase costs dramatically as the concerns expressed. The present form of the proposed rules was presented at the May 2003 meeting of the Land Reclamation Commission, and all parties including the industry representatives stated that they could live with these proposed rules. Therefore, the Land Reclamation Commission does not agree that the department has failed to consider the interests of political subdivisions.

COMMENT: One commentor stated that it was totally inappropriate to allow for gravel mining in streams that are designated as “losing” streams.

RESPONSE: The amendment contains performance standards for conducting in-stream sand and gravel mining in a manner that protects stream resources of all kinds. Additional protections for losing streams may exist in the statutes and regulations that are enforced by the Clean Water Commission and the Water Protection Program of the Missouri Department of Natural Resources, and nothing in this amendment will interfere with enforcement of these statutes and regulations by the Clean Water Commission or the Water Protection Program.

COMMENT: One commentor stated that a distance prohibition should be established which would ban all stream gravel mining from occurring within a five (5) mile radius of any state or national outstanding resource water.

RESPONSE: The amendment contains performance standards for conducting in-stream sand and gravel mining in a manner that protects stream resources of all kinds. Additional protections for outstanding state and national resource waters may exist in the statutes and regulations that are enforced by the Clean Water Commission and the Water Protection Program of the Missouri Department of Natural Resources, and nothing in this amendment will interfere with enforcement of these statutes and regulations by the Clean Water Commission or the Water Protection Program.

COMMENT: One commentor expressed his understanding that no right to mine within stream channels can be granted without first securing a 404/401 permit and certification to do so.

RESPONSE: The U.S. Army Corps of Engineers and the Water Protection Program should be consulted regarding the precise situations in which a 404/401 permit and certification are required, as this process is not handled by the Land Reclamation Commission or the Land Reclamation Program. However, it should be noted that the 404/401 permit and certification program does not cover all waterbodies in Missouri. Therefore, the existence of the 404/401 permit and certification process does not obviate the need for obtaining a permit and complying with regulations under the Land Reclamation Act.

COMMENT: Several county governments commented that the amendment, while at present does not apply to county governments or private individuals, it will only be a matter of time before the department will also require permits from them as well.

RESPONSE: The current amendment is based upon legislation which specifically exempts the above two entities from the permitting requirements and therefore the terms of this amendment. There are no plans to change existing legislation and this amendment clearly does not.

COMMENT: Several county governments commented that while the amendment does not appear to apply to them, it will open the door for the department's Water Protection Program to enforce the permitting and performance requirements upon them and cause the issuance of violations to them from that program.

RESPONSE: The requirements of the Land Reclamation Act are generally enforced only by Land Reclamation Act personnel, and not Water Protection Program personnel. Occasionally, Water Protection Program personnel will refer an issue to the Land Reclamation Program, but then it is left to the Land Reclamation Program to determine whether a violation of the Act or the Land Reclamation Commission's regulations has occurred, and to take enforcement action if warranted.

COMMENT: Several county governments commented that the amendment will not improve protection for Missouri streams but will, in fact, harm them by restricting gravel removal.

RESPONSE: The amendment was designed with the fundamental concept in mind from the beginning to allow for gravel removal while at the same time offering basic protection for the stream being mined. Where there are extenuating circumstances such as excessive gravel build up, bedrock stream bottoms adjacent or contiguous to the extraction area, or any other mitigating circumstance, a variance from the requirements of the amendment may be granted upon receipt of a complete variance application. This is stated up front in the amendment and is provided in order to meet the needs of operators whose specific situations require variance from the provisions of this amendment.

COMMENT: One county government commented that the amendment will ultimately result in a loss of tourism because people will no longer to be able to float/fish in gravel choked streams

RESPONSE: The amendment is designed to allow for gravel extraction while protecting stream resources, and in cases where the stream is choked with gravel, variances to the provisions of the amendment may be applied for and, if justified, approved.

COMMENT: One county government commented that restricting gravel removal will result in gravel choked streams that will, in turn, cause increased flooding.

RESPONSE: Where gravel choked streams exist, variances to the depth restriction may be applied for and, if justified, approved.



Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 40--Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for Industrial Mineral Open
Pit and In-Stream Sand and Gravel Operations

ORDER OF RULEMAKING

By the authority vested in the Land Reclamation Commission under 444.530 and 444.767, RSMo (2001), the Commission amends a rule as follows:

10 CSR 40-10.050 Performance Requirements is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 2, 2004 (29 MoReg 205). No changes have been made to the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SPECIAL NOTE: Private individuals who mine for their personal use are exempt from these rules. Political subdivisions who mine sand and gravel for public projects and utilize their own personnel and equipment are also exempt from these rules. This exemption is provided in the law at 444.770.5 RSMo. Nothing in this amendment changes these exemptions.

SUMMARY OF COMMENTS: The Missouri Land Reclamation Commission, through its staff in the Land Reclamation Program of the Missouri Department of Natural Resources, received comments on this proposed amendment from several parties representing various viewpoints both in written form during the comment period and during the public hearing. The comments ranged from persons stating there should be no mining allowed at all within any of Missouri's streams to persons stating there should be no regulation at all on the mining of sand and gravel from Missouri's rivers and streams. Comments were received from private individuals, stream user organizations, mining industry organizations, environmental organizations, private property rights organizations, county commissions and state legislators. Many of the written comments received stated an overall satisfaction with the proposed regulations and the statement that the regulations should not be further compromised. Some commenters expressed a desire for stronger regulations while others expressed a desire to keep the proposed regulations as guidelines only. The formal public comment period ended on March 25, 2004 although the Land Reclamation Commission continued to invite informal input into the proposed amendment until April 30, 2004. A public hearing was held on this proposed amendment on March 25, 2004. Because the nature of the comments received both in writing and at the hearing are, in many instances, similar

if not exactly alike, they are being grouped together according to their content for purposes of this summary of responses to comments. Where more than one person or organization submitted the same comment, this is noted below.

COMMENT: One commenter expressed the opinion that no mining of sand and gravel should be allowed at all in any of Missouri's stream courses.

RESPONSE: The current statutes which are known as the "Land Reclamation Act", allow for the excavation of sand and gravel from Missouri's streams and provide that, when not exempt, an operator must first secure a mining permit to engage in surface mining from the Land Reclamation Commission. The "Act" contains exemptions from the permitting requirement for political subdivisions and private individuals in certain situations. The permit application must state how the operator will extract sand and gravel from the stream in accordance with recognized guidelines which are designed to protect both water quality and the physical nature of the stream while allowing for the extraction of the mineral deposit.

COMMENT: One commenter, representing the industry involved in the rulemaking, stated that the proposed amendment is a good compromise that allows for mineral extraction while at the same time is protective of the stream. The statement was made that the industry finds the amendment to be acceptable.

RESPONSE: The Land Reclamation Commission agrees that the amendment is an acceptable compromise arrived at through extensive discussion and examination by all interested parties involved.

COMMENT: One commenter asked the question if the Land Reclamation Program had coordinated with the Water Protection Program concerning crossing a stream in order to access a mineral deposit.

RESPONSE: The department's Land Reclamation Program has coordinated with the Water Protection Program during the course of the development of the amendment and has worked closely with the Water Protection Program in order to assure the amendment does not conflict with that program's requirements. The Water Protection Program's requirements are separate from and in addition to the requirements set forth in the Land Reclamation Act and the Land Reclamation Commission's regulations.

COMMENT: One commenter asked the question that if an operator has a permit to mine sand and gravel from a floodplain, does the amendment allow for the crossing of the stream associated with the floodplain in order to access the minesite.

RESPONSE: The amendment will allow for the stream to be crossed as long as the crossing is made as perpendicular to the stream flow as possible and there is no fill placed in the stream in order to construct such a crossing. However, the amendment does not address whether and when a permit is required from the U.S. Army Corps of Engineers or the Water Protection Program of the Missouri Department of Natural Resources.

COMMENT: One commenter questioned what review standard would be used to determine if specific (permit) conditions are necessary to preserve stream reaches within “Outstanding State Resource Waters”.

RESPONSE: The Land Reclamation Program will review all applications to mine within “Outstanding State Resource Waters” with a higher level review than is performed for permits outside of these stream reaches. The purpose will be to provide additional protective measures, if necessary, for these exemplary streams. This may include but not be limited to larger buffer zone requirements, further restrictions on depth of excavations than provided by the amendment, and limiting or negating any equipment operation in the flowing water of such streams for purposes of crossing such streams or any other purposes. The Water Protection Program may have separate rules or statutes that may restrict activities on Outstanding State Resource Waters that must be followed.

COMMENT: Several commenters expressed their support for the amendment but also stated their desire to strengthen the amendment by requiring a twenty (20) foot buffer between the area of excavation and the flowing water instead of the ten (10) feet proposed; requiring a one hundred (100) foot buffer along the high bank of the stream to protect the riparian corridor instead of the twenty-five (25) feet proposed; requiring that no excavation be allowed below one (1) foot above the flowing water level instead of to the water level as proposed; and requiring a determination of the presence of endangered species instead of the consultation provision with the United States Fish and Wildlife Service and the Missouri Department of Conservation as proposed.

RESPONSE: The development of the amendment resulted from several years of discussions, meetings, hearings, and stakeholder input. The resulting amendment is seen by the program and the commission as the best that could be realized given the importance of the industry, the importance of the mineral commodity, and the importance of protecting the stream resource. While the comments above are noted and appreciated by the program and commission, the resulting amendment is generally recognized by all parties concerned to be a reasonable approach that balances the mining of this important resource with protection of Missouri’s streams from undue damage and pollution.

COMMENT: Many comments were received that expressed satisfaction with the amendment as proposed and stated that the amendment is the minimum compromise acceptable to them and that no further compromise be considered. These same commenters expressed the desire for the commission and program to proceed with implementation of the amendment as soon as possible.

RESPONSE: The Land Reclamation Program and the Land Reclamation Commission appreciate these comments and are in agreement with them.

COMMENT: Many comments were received that expressed support for the amendment and went on to state their desire to include city, county, and state entities within the amendment.

RESPONSE: Support for the amendment is appreciated. However, political subdivisions who use their own personnel and equipment to excavate sand and gravel from streams for

use on their own projects are exempt from the permitting requirement by statute. Private individuals who mine for personal use are also exempt from the permitting requirement by statute. The current amendment cannot and does not do anything to alter these statutory exemptions.

COMMENT: Several commenters expressed concerns about the increased costs to commercial sand and gravel operators and the impacts to the resulting costs for production of concrete and road maintenance for county governments who do not own their own equipment and rely upon commercial operators for this product.

RESPONSE: This concern was expressed at least two years ago and was in fact the reason that the Land Reclamation Commission ordered a workgroup to rewrite the proposed rules into their current form. The Commission did not want to impose standards that would increase costs dramatically as the concerns expressed. The present form of the proposed rules was presented at the May 2003 meeting of the Land Reclamation Commission, and all parties including the industry representatives stated that they could live with these proposed rules. As a background summary, the amendment was derived from previous permitting and operational requirements of the Army Corps of Engineers general permit #GP-34M. These general permits were issued by the Corps to virtually all commercial mining operators during the mid to late 1990's. During that time period commercial operators were required to operate in compliance with those permit conditions. Operators were, at that time a part of the process that resulted in the GP-34M permit and openly expressed that those permit conditions did not result in an increased cost for production of the mineral commodity. The current amendment is, in fact, a reduced version of those same requirements which should also result in no significant increased costs to produce the important commodity of sand and gravel which is relied upon to produce concrete along with other valuable uses for this resource. Furthermore, the current regulations require that a commercial operator, in an application for a mining permit, state in the application how the mineral commodity will be removed from streams without impact to water quality or the stream itself. Currently, applications for permits to conduct surface mining of sand and gravel incorporate descriptions of the measures an operator will take to protect the stream and water quality, such as restricting excavation to the level of the flowing water at the time of excavation or, in the case of a dry stream, restricting excavation to the lowest point in the defined channel or to where water would flow in the case of a rainfall event. Applicants currently state that the banks of the stream will not be disturbed and the operations will not be conducted in the water of the stream. These permit applications statements are now simply being converted into a rule. Operators that are currently in compliance with their existing permits will not realize any impact on their method of operations and hence will not realize any increase costs of production. In fact, the program will be generating a new form of permit application for operators that will do away with the current necessity of filling out a "Stream Protection Plan" and replacing that part of the permit application with a standardized form that is filled in for the applicant. This form will then simply need to be signed and notarized by the applicant and the requirements for a permit application will then be met. This is seen as a cost reduction to the applicant which will save time and money for the applicant and result

in a complete permit application simply by signing the standardized form. It will also assure that all operators know up front how they will be expected to operate and all operators will be then mining this resource with consistent requirements across the state of Missouri. However, should an operator prefer to write a site specific stream protection plan, this is still an option and will be evaluated by the program for its effect in protection of the stream resource if a request for variance is received.

COMMENT: Several commenters objected to the amendment without scientific studies produced from the state of Missouri to show a need for the amendment.

RESPONSE: During the course of the development of this amendment, the Program has collected research studies from a variety of sources that address the impacts of sand and gravel mining from streams. While it is true that specific studies on streams within Missouri are minimal, there has been extensive research done on streams throughout the United States and elsewhere in the world. These studies have been provided to all interested parties and are available on the program's web site. The studies clearly indicated that improper mining of sand and gravel from streams can and does result in overall stream degradation and impacts to water quality and aquatic life within those streams. It can be reasonably extrapolated that these same impacts from improper mining elsewhere will also result in impacts to the streams of Missouri.

COMMENT: Several commenters stated that the amendment will prohibit the excavation of sand and gravel and result in excess gravel build up thereby causing an increase in erosion to the adjacent stream banks.

RESPONSE: The amendment does not in any way prohibit the excavation of sand and gravel. The amendment sets forth base requirements for this type of excavation however, provisions are made in the amendment for any applicant to apply for a variance from the base requirements if site specific conditions warrant the variance. The whole point of the variance provision in the amendment is to recognize the fact that streams can vary in their character and that there may very well be instances where site specific conditions would justify approval of a variance. The variance provisions of the amendment are viewed as an essential component of the amendment to allow for reasonable solutions to site specific conditions such as excessive gravel build up.

COMMENT: Several commenters asked the question of why regulations are needed.

RESPONSE: The amendment is designed for protection of streams and water quality in those streams while at the same time allowing for the mining of sand and gravel. The amendment also provides for all operators to clearly understand how they will conduct their mining operations and to provide for consistency in the permitting process for this industry.

COMMENT: Several commenters stated that "Class C" streams and the mineral contained within them are the sole property of the owner of that stream and that any regulation of the mining and commercial use of the mineral in those streams is unconstitutional.

RESPONSE: The amendment is based upon current statutes known as the Land Reclamation Act, §§444.760 to 444.790 of the Revised Statutes of Missouri. The Act does not provide for any exception based upon whether the stream is designated as a “Class C” stream in some other law. This amendment does not and cannot do anything to change the Land Reclamation Act. The Land Reclamation Commission and Land Reclamation Program believe, based upon advice of counsel, that the Act is constitutional.

COMMENT: Several commenters expressed the opinion that private property owners will be next in line to be regulated for the extraction of sand and gravel from streams and oppose the amendment on that basis.

RESPONSE: This amendment, as stated earlier, does not and cannot change any exemptions currently in existence under the law. The amendment clearly states up front that it applies to non-exempt mining operations only.

COMMENT: One commenter stated that a private landowner cannot hire a contractor to remove gravel from his/her property for personal use without first obtaining a permit and becoming subject to the regulations.

RESPONSE: This is a question of interpretation of the Land Reclamation Act. As stated above, this amendment is not changing the scope of applicability of the Land Reclamation Act.

COMMENT: Several commenters expressed the opinion that the amendment impinges upon a landowner’s right to sell gravel mined from his/her property thereby infringing upon private property rights.

RESPONSE: The requirement to obtain a permit for surface mining of a mineral resource is not addressed by this amendment. That requirement is found in statutes known as the “Land Reclamation Act” and applies to all minerals identified in that “Act”. Sand and gravel are two of those minerals. This amendment cannot and does not add any permit requirement that is not already contained within the Act.

COMMENT: One commenter stated that the Regulatory Impact Report, prepared by the program as a part of the proposed rule process, contains many false and misleading statements.

RESPONSE: The Regulatory Impact Report was prepared by the Program using the best information available to it at the time of preparation and in the spirit of openness, honesty, and credibility, and the Program believed that it was accurate at the time it was prepared. Everyone involved with the process of crafting this amendment did so with their own points of view and expectations. The Program believes that what the commenter is referring to as false and misleading is actually just an expression of a different opinion than the opinion held by the commenter.

COMMENT: Several commenters believe this amendment will prohibit the removal of sand and gravel from Missouri’s streams.

RESPONSE: This amendment does not contain a prohibition on the removal of this important resource from streams. The amendment is designed, in fact, to allow for the removal of this mineral commodity while at the same time providing for protection of an equally valuable resource to the citizens and economy of Missouri, that of our rivers and streams.

COMMENT: Several commenters stated that the Department of Natural Resources has failed to comply with the “Texas County – State of Missouri Land Management Plan” in the course of the development of this amendment.

RESPONSE: As stated at the beginning of this Order of Rule Making in the Special Note, political subdivisions using their own personnel and equipment are exempt by law from the permitting requirements of the Act. Political subdivisions who contract for services are affected only indirectly because their contract operator has always been subject to the permitting requirements of the Land Reclamation Act. As stated in a previous response, this concern was expressed at least two years ago and was in fact the reason that the Land Reclamation Commission ordered a workgroup to rewrite the proposed rules into their current form. The Commission did not want to impose standards that would increase costs dramatically as the concerns expressed. The present form of the proposed rules was presented at the May 2003 meeting of the Land Reclamation Commission, and all parties including the industry representatives stated that they could live with these proposed rules. Therefore, the Land Reclamation Commission does not agree that the department has failed to consider the interests of political subdivisions.

COMMENT: One commenter stated that it was totally inappropriate to allow for gravel mining in streams that are designated as “losing” streams.

RESPONSE: The amendment contains performance standards for conducting in-stream sand and gravel mining in a manner that protects stream resources of all kinds. Additional protections for losing streams may exist in the statutes and regulations that are enforced by the Clean Water Commission and the Water Protection Program of the Missouri Department of Natural Resources, and nothing in this amendment will interfere with enforcement of these statutes and regulations by the Clean Water Commission or the Water Protection Program.

COMMENT: One commenter stated that a distance prohibition should be established which would ban all stream gravel mining from occurring within a five (5) mile radius of any state or national outstanding resource water.

RESPONSE: The amendment contains performance standards for conducting in-stream sand and gravel mining in a manner that protects stream resources of all kinds. Additional protections for outstanding state and national resource waters may exist in the statutes and regulations that are enforced by the Clean Water Commission and the Water Protection Program of the Missouri Department of Natural Resources, and nothing in this amendment will interfere with enforcement of these statutes and regulations by the Clean Water Commission or the Water Protection Program.

COMMENT: One commenter expressed his understanding that no right to mine within stream channels can be granted without first securing a 404/401 permit and certification to do so.

RESPONSE: The U.S. Army Corps of Engineers and the Water Protection Program should be consulted regarding the precise situations in which a 404/401 permit and certification are required, as this process is not handled by the Land Reclamation Commission or the Land Reclamation Program. However, it should be noted that the 404/401 permit and certification program does not cover all waterbodies in Missouri. Therefore, the existence of the 404/401 permit and certification process does not obviate the need for obtaining a permit and complying with regulations under the Land Reclamation Act.

COMMENT: Several county governments commented that the amendment, while at present does not apply to county governments or private individuals, it will only be a matter of time before the department will also require permits from them as well.

RESPONSE: The current amendment is based upon legislation which specifically exempts the above two entities from the permitting requirements and therefore the terms of this amendment. There are no plans to change existing legislation and this amendment clearly does not.

COMMENT: Several county governments commented that while the amendment does not appear to apply to them, it will open the door for the department's Water Protection Program to enforce the permitting and performance requirements upon them and cause the issuance of violations to them from that program.

RESPONSE: The requirements of the Land Reclamation Act are generally enforced only by Land Reclamation Act personnel, and not Water Protection Program personnel. Occasionally, Water Protection Program personnel will refer an issue to the Land Reclamation Program, but then it is left to the Land Reclamation Program to determine whether a violation of the Act or the Land Reclamation Commission's regulations has occurred, and to take enforcement action if warranted.

COMMENT: Several county governments commented that the amendment will not improve protection for Missouri streams but will, in fact, harm them by restricting gravel removal.

RESPONSE: The amendment was designed with the fundamental concept in mind from the beginning to allow for gravel removal while at the same time offering basic protection for the stream being mined. Where there are extenuating circumstances such as excessive gravel build up, bedrock stream bottoms adjacent or contiguous to the extraction area, or any other mitigating circumstance, a variance from the requirements of the amendment may be granted upon receipt of a complete variance application. This is stated up front in the amendment and is provided in order to meet the needs of operators whose specific situations require variance from the provisions of this amendment.

COMMENT: One county government commented that the amendment will ultimately result in a loss of tourism because people will no longer to be able to float/fish in gravel choked streams

RESPONSE: The amendment is designed to allow for gravel extraction while protecting stream resources, and in cases where the stream is choked with gravel, variances to the provisions of the amendment may be applied for and, if justified, approved.

COMMENT: One county government commented that restricting gravel removal will result in gravel choked streams that will, in turn, cause increased flooding.

RESPONSE: Where gravel choked streams exist, variances to the depth restriction may be applied for and, if justified, approved.